

REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, August 23, 2006

REPAYMENT SCHEDULE FOR AMOUNTS DUE TO THE STATE

PURPOSE OF REPORT

To notify the State Allocation Board (SAB) that amendments to the School Facility Program (SFP) Regulations to establish criteria for repaying amounts due to the State were not successful and have been withdrawn from the Office of Administrative Law (OAL).

DESCRIPTION

Recently, the SAB was presented with a situation wherein a school district will be required to return funds to the State which would place the school district in a financial distress if all the funds have to be returned to the State within 60-days as required by the Education Code. To assist the district in meeting their financial commitment and avoid possible financial distress, in May 2006, Staff presented regulatory amendments to establish criteria for repaying amounts due to the State. The Board adopted the proposed regulations and authorized Staff to file the proposed regulations on an emergency basis with the OAL. Upon further research and review, Staff has recently withdrawn the proposed amendments to the SFP because OAL has opined that the law does not provide sufficient authority for the amended regulations.

AUTHORITY

Education Code (EC) 17076.10 (c) states that school districts required by the Board to return State funds must repay the amount within 60 days. If a school district fails to make the required payment, the Office of Public School Construction shall notify the Controller and the school district in writing, and the Controller shall deduct the amount from the school district's next principal apportionment or apportionments of state funds to the district.

EC Section 17070.51(b)(1) cites that after the Board determines that a Material Inaccuracy occurred, specific penalties are authorized in Education that allow the Board to establish a repayment schedule of no more than five years; "the school district shall repay to the Board ... an amount proportionate to the additional funding received as a result of the material inaccuracy including interest at the rate paid on moneys in the Pooled Money Investment Account...."

STAFF COMMENTS

Staff is aware of one other situation wherein the district will owe a substantial sum of money to the State that will potentially place the district's budget in severe financial jeopardy if the amount due was repaid in one lump sum payment. The district is requesting that once the audit is finalized that it be allowed to make incremental payments.

Changes to the law are necessary in order to provide the SAB with flexibility regarding the ability to offer a repayment schedule over a period of five years. It is our understanding that such attempts are currently being made through legislation. It is anticipated that the legislative remedy will be in place prior to the final closeout audit for these projects.

RECOMMENDATION

Accept the report.